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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter

Assessment and Collection
of Regulatory Fees for
Fiscal Year 1995

DOCKET FILE COPY ORIGINAL

MD Docket No. 95-3

**MOTION OF PANAMSAT CORPORATION
FOR LEAVE TO FILE FURTHER COMMENTS**

PanAmSat Corporation ("PanAmSat"), the successor in interest to PanAmSat, L.P., by its attorneys, hereby submits this motion for leave to file the attached further comments to the Notice of Proposed Rulemaking in the above-captioned matter. Because of the importance of this proceeding, the substantial fees at stake, and the inability of PanAmSat to anticipate the substance of certain reply comments, PanAmSat requests leave to file the attached comments. PanAmSat believes that the attached comments will help clarify one important issue raised in this proceeding. Grant of this motion would thus help ensure that the Commission's regulatory fee schedule will serve the public interest.

Respectfully submitted,

PANAMSAT CORPORATION

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March 13, 1995

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FURTHER COMMENTS OF PANAMSAT CORPORATION

PanAmSat Corporation ("PanAmSat"), the successor in interest to PanAmSat, L.P., by its attorneys, hereby submits the following comments to the Notice of Proposed Rulemaking in the above-captioned matter. These comments address only one issue — whether or not Comsat Corporation ("Comsat") is liable for regulatory fees under Section 9 of the Communications Act of 1934, as amended, to offset the cost of regulating Comsat's international satellite activities. Every Party that has addressed this issue, including Comsat, agrees that Comsat should pay "its fair share" of Section 9 fees.¹ PanAmSat requests that Comsat be required to do so.

DISCUSSION

There is no dispute that Comsat, *per se*, is not exempt from regulatory fees under Section 9.² Comsat also apparently does not contest the fact that the

¹ Reply Comments of Comsat at 3; accord Comments of PanAmSat at 2; Comments of Columbia Communications Corporation at 4-7; Reply Comments of GE American Communications, Inc. ("GE"), at 6-12.

² See Reply Comments of Comsat at 2 ("Comsat is not exempt from the regulatory fee program"). Under Section 9, the Commission is to recover the costs of regulating those entities within its jurisdiction. See 47 U.S.C. § 159(a)(1). Comsat is a common carrier and fully subject to the jurisdiction of the Commission. 47 U.S.C. § 741.

Commission incurs significant costs regulating Comsat's activities as a provider of Intelsat and Inmarsat space segment and as the United States signatory to these organizations. For instance, the Commission expends considerable resources participating in the Comsat instructional process, regulating Comsat investments in Intelsat and Inmarsat satellites, regulating Comsat's common carrier activities, and monitoring Comsat's use of space segment resources for nonjurisdictional services. As GE noted, "the regulatory resources the Commission devotes to Comsat [probably] far exceed those applicable to all the space stations of...other operators of domestic and separate system satellites [combined]."³

Rather than defend on the merits its non-payment of regulatory fees to offset the costs incurred by the Commission regulating Comsat's international satellite activities, Comsat chose instead to knock down a straw man by arguing that "Intelsat and Inmarsat satellites are not subject to annual space station fees."⁴ Although this proposition may be valid, it is inapposite. The issue is not the imposition of regulatory fees on Intelsat or Inmarsat satellites. PanAmSat simply asks that the costs associated with regulating Comsat's international satellite activities be recouped from Comsat, as the Communications Act requires, rather than from Comsat's competitors and other space station operators.

There is nothing in the statute or in its legislative history that suggests that the Commission may not recover the costs of regulating Comsat's international satellite activities. Indeed, as GE points out, the fee schedule passed by Congress did not specify the regulatory activities to be supported by Section 9 fees, nor did

³ Reply Comments of GE at 3.

⁴ Comsat Comments at 1.

it limit the parties who would pay Section 9 fees.⁵ The House Commerce Committee Report, upon which Comsat relies,⁶ indicates merely that some members of Congress were particularly sensitive to international concerns that might arise if the Commission were to recoup fees in the space-station fee category based on the number of Intelsat or Inmarsat satellites. The Committee Report does not suggest that the costs of regulating Comsat's activities with regard to these satellites should not be recovered.

Thus, to the extent that the Commission's allocation for 1995 expenditures on the regulation of operational geosynchronous space stations includes the costs of regulating Comsat's participation in Intelsat and Inmarsat, those costs should be assessed to Comsat.

If the current fee schedule does not allow the Commission to recover the costs of regulating Comsat by imposing space station fees on Comsat, the Commission is required by statute to amend the fee schedule. Under Section 9, the Commission is obligated to ensure that fees are "reasonably related to the benefits provided to the payor of the fees by the Commission's activities" and it is permitted to amend the fee schedule in order to do so.⁷ In this case, it is undisputed that considerable resources are expended regulating Comsat's international activities. These costs are not incurred for the benefit of PanAmSat or other satellite operators, and they cannot, therefore, lawfully be charged to

⁵ Reply Comments of GE at 7.

⁶ Although PanAmSat is not advocating the imposition of space station fees on Comsat based on the number of Intelsat or Inmarsat satellites, it is worth noting that no prohibition against such accounting is found in the statute. And to the extent that the cryptic language in the House Commerce Committee Report can be read to discourage such accounting, the Supreme Court has cautioned that courts and agencies should not give "authoritative weight to a single passage of legislative history that is in no way anchored in the text of the statute." Shannon v. United States, 114 S. Ct. 2419, 2426 (1994).

⁷ 47 C.F.R. § 159(b)(3), 159(b)(1)(A).

these other payors of space station fees. To the contrary, the only entity that may, consistently with the statute, be charged for these costs is Comsat.


Although it would be administratively less burdensome to assess Section 9 fees to Comsat on the basis of operational Intelsat and Inmarsat space stations, there is no reason that the Commission cannot reallocate these costs to another (or a new) service category in which Comsat is (or would be) the payor. For instance, the Commission could amend the schedule by creating a special category for Comsat activities in which Comsat would be the only payor. One way or another, Comsat should be required to pay "its fair share" of Section 9 fees.

CONCLUSION

For the reasons stated herein, PanAmSat submits that Comsat should be required to pay Section 9 fees, either on the basis of operational Intelsat and Inmarsat satellites or on some other basis, to offset the regulatory resources expended for the benefit Comsat as a provider of Intelsat and Inmarsat space segment.

Respectfully submitted,

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March 13, 1995

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copies of the foregoing Motion of PanAmSat Corporation for Leave to File Further Comments and Further Comments of PanAmSat Corporation were sent by first-class mail, postage prepaid, this 13th day of March, 1995, to each of the parties on the attached list.

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